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June 20, 2002

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Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 12th Street SW
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte – Consolidated Application of EchoStar Communications, General Motors Corporation, and Hughes Electronics Corporation for Authority to Transfer Control, CS Docket No. 01-348

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. §1.1206, and Public Notice DA 01-3005 (released December 21, 2001), Johnson Broadcasting, Inc. and Johnson Broadcasting of Dallas, Inc. (collectively "Johnson Broadcasting") submits this ex parte written presentation.

Johnson Broadcasting is the licensee of television broadcast stations KNWS Katy (Houston) and KLDT Lake Dallas (Dallas) Texas. On January 28, 2002 Johnson Broadcasting filed a Petition to Deny the above referenced transfer of control application. In its Petition, Johnson Broadcasting argued that authorizing the EchoStar/DirecTV merger would result in excessive market concentration and would undermine the ability of local broadcast stations to serve the public by denying or marginalizing their ability to participate in the carriage of their television signals on EchoStar's satellite service, as required under Section 338 of the Communications Act and Section 76.66 of the Commission's Rules. Specifically, Johnson Broadcasting was concerned that EchoStar, after the merger, would use its market power to deny carriage to certain disfavored television stations, e.g. independent and public broadcast stations.

Johnson Broadcasting's controlling shareholder and president, Douglas Johnson, also met with each of the Commissioners' legal assistants during the week of March 4th. In his meetings Mr. Johnson voiced his concerns that a merger between DirecTV and

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EchoStar would not serve the best interests of broadcasters. Mr. Johnson was concerned that the merged entity would continue EchoStar's policy of excluding disfavored broadcasters from carriage.

Initially upon receipt of Johnson Broadcastings' elections of mandatory carriage, EchoStar in a form letter rejected Johnson Broadcasting's requests for mandatory carriage. However, after correspondence with Johnson Broadcasting, EchoStar in the "spirit of cooperation" withdrew its letter denying carriage to Johnson Broadcastings' two television stations.

EchoStar's "spirit of cooperation" vanished after EchoStar and DirecTV filed on December 3, 2001 their applications for transfer of control. In violation of the Commission's rules, EchoStar notified Johnson Broadcasting on December 7, 2001 that it would not carry KNWS and KLDT during the 2002 must carry cycle. Johnson Broadcasting's stations are not in the category of stations favored by EchoStar, e.g. network affiliates. With the threat of competition from DirecTV eliminated, EchoStar's no longer had any competitive reason to carry Johnson Broadcasting's stations. To regain its carriage rights, Johnson Broadcasting filed suit in the United States District Court of the Southern District of Texas, Houston Division.

Ever since it filed the transfer application, EchoStar has repeatedly stated publicly that in that in any market where it provides local-into-local service, it is willing to carry the signal of any local television station. EchoStar's Chairman Charles Ergen, speaking before a luncheon meeting of the Federal Communications Bar Association ("FCBA") in Washington, D.C., on May 1, 2002, recently reiterated that promise.

After the luncheon, attorneys for Johnson Broadcasting, including undersigned counsel, met with Mr. Ergen and his attorney. Mr. Ergen stated that the reason EchoStar was not carrying KNWS and KLDT was that it did not have sufficient transponder capacity in the Houston and Dallas markets. Mr. Ergen then said that EchoStar was about to launch a new satellite in June with additional local program capacity.¹ As soon as the new satellite is launched and operational, Mr. Ergen assured counsel that Johnson Broadcasting's stations would be carried. Mr. Ergen and undersigned counsel shook hands on what undersigned counsel believed was an agreement for carriage of Johnson Broadcasting's stations.

A few weeks after Mr. Ergen unequivocally agreed to carry KLDT and KNWS, Johnson Broadcasting's Houston counsel received a telephone call from EchoStar's Houston attorney. EchoStar's attorney said that EchoStar would carry KNWS, **but not**

¹ Mr. Ergen did not identify the satellite, but Johnson Broadcasting assumes that he was referring to EchoStar VIII, File No. SAT-LOA-200220329-00042.

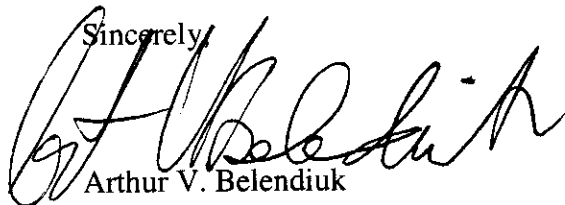
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KLDT, until the next election cycle, provided that **KNWS** continues to broadcast Houston Astros baseball games. **KNWS** markets itself as the "Home of the Astros" and broadcasts a full complement of Houston Astros games. EchoStar's sole interest in Johnson Broadcasting's two non-network affiliated stations was the broadcast of the Houston Astros baseball games. Since Johnson Broadcasting would not agree to EchoStar's proposal, as of this time, neither **KNWS** nor **KLDT** are being carried by EchoStar.

While EchoStar talks about carrying broadcast stations, it is only interested in network affiliates or stations with unique local programming. Despite paying lip service to the requirements of the Satellite Home Improvement Act ("SHIVA"), EchoStar has failed to make any good-faith effort to comply with its carriage requirements. There can be no doubt about that the intent of Congress in enacting SHIVA was to require the carriage of all local television stations as a condition of being granted a blanket compulsory copyright license. Congress made no exception to allow content-based decisions by EchoStar.

Mr. Ergen promises the FCC that EchoStar will carry all television stations. This statement, however, lacks candor. What the evidence indicates is that Mr. Ergen intends to carry only those station's that serve EchoStar's specific programming goals. Whenever possible independent television stations will not be carried. The requirements of SHIVA are unambiguous; EchoStar has an obligation to carry all television stations. The Commission should not be bamboozled by Mr. Ergen's two-faced statements. EchoStar simply cannot be trusted. Therefore, before the Commission takes any action on the transfer application it should require EchoStar to first follow through on its promise to carry all broadcast stations. Alternative, the Commission should deny the transfer application.

Sincerely,

Arthur V. Belendiuk
Counsel for
JOHNSON BROADCASTING, INC.

Cc: David Goodfriend, Esq.,
Counsel for EchoStar Communications Corp.
The Honorable Michael K. Powell*
The Honorable Kathleen Q. Abernathy*
The Honorable Michael J. Copps*
The Honorable Kevin J. Martin*
(* by hand delivery)